

# Notice of Allowability

Application No.

09/816,182

Examiner

Anne-Marie Falk, Ph.D.

Applicant(s)

PROCKOP ET AL.

Art Unit

1632

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 8/31/05.
2. ☒ The allowed claim(s) is/are 11-19.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

*Anne-Marie Falk*  
ANNE-MARIE FALK, PH.D.  
PRIMARY EXAMINER

### **DETAILED ACTION**

The amendment filed August 31, 2005 (hereinafter referred to as "the response") has been entered. Claims 1-10 have been cancelled. Claims 11-19 have been newly added.

Accordingly, Claims 11-19 remain pending in the instant application.

The following is an examiner's statement of reasons for allowance:

The rejection of Claims 1-3 and 9 under 35 U.S.C. 112, first paragraph, for failing to comply with the written description requirement, is withdrawn in view of the cancellation of the claims. The rejection is not applied to the newly added claims in view of the new limitations added to the claims.

The rejection of Claims 1-3 and 9 under 35 U.S.C. 112, first paragraph, for failing to comply with the enablement requirement, is withdrawn in view of the cancellation of the claims. The rejection is not applied to the newly added claims in view of the new limitations added to the claims.

The rejection of Claims 1-3 under 35 U.S.C. 102(b) as anticipated by Bruder et al. (1997) is withdrawn in view of the cancellation of the claims. The rejection is not applied to the newly added claims in view of the new limitations added to the claims, which are not taught or suggested by Bruder et al.

The rejection of Claims 1-3 under 35 U.S.C. 102(b) as anticipated by Pittenger et al. (1999) is withdrawn in view of the cancellation of the claims. The rejection is not applied to the newly added claims in view of the new limitations added to the claims, which are not taught or suggested by Pittenger et al. and further in view of Applicants' argument set forth at page 8 of the response, which states that the cells disclosed by Pittenger et al. express PDGF-R, and the supporting documentation supplied with the response. See the "Supplementary Material" from the Science article of Pittenger et al. at Table 2, which shows that human mesenchymal stem cells are positive for PDGF-R.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

***Conclusion***

Claims 11-19 are allowable.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne-Marie Falk whose telephone number is (571) 272-0728. The examiner can normally be reached Monday through Friday from 10:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla, can be reached on (571) 272-0735. The central official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to (571) 272-0547.

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PRIMARY EXAMINER